

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

<b>JOSEPH DICK,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>Civil Case No. 3:10-cv-00505-JAG</b>
	:	
<b>HELEN FAHEY,</b>	:	
<b>CHAIR OF THE VIRGINIA</b>	:	
<b>PAROLE BOARD,</b>	:	
	:	
<b>Respondent.</b>	:	

**PETITIONER JOSEPH DICK'S STATUS REPORT**

Petitioner Joseph Dick received this Court's June 14, 2011 Order on his Motion to Stay and Abey Petition for Writ of Habeas Corpus to Permit Exhaustion and submits this Status Report to apprise the Court of the current posture of his habeas proceedings in the Commonwealth's courts and related matters.

**Proceedings in the Commonwealth's Courts**

On August 3, 2010, Joseph Dick filed his Petition for Writ of Habeas Corpus ("State Habeas Petition") in the Circuit Court for the City of Norfolk.<sup>1</sup> The State Habeas Petition contained a due process claim based on information revealed by Ford's May 7, 2010 indictment and Dick's discovery of additional new evidence in its wake.

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<sup>1</sup> Danial Williams and Eric Wilson, Joseph Dick's co-defendants, filed similar petitions for habeas corpus before the Circuit Court.

On September 27, 2010, the Commonwealth filed a Motion to Dismiss alleging that Dick's State Habeas Petition was time barred. On December 6, 2010, Dick filed his Opposition to the Motion to Dismiss and a Motion for Leave to Conduct Discovery. In support of his Opposition, Dick submitted an attorney affidavit ("the Salzman Affidavit"), which had been previously submitted in Danial Williams's case. The Salzman Affidavit described the fruits of the investigation initiated following Ford's indictment, including the following: Petitioners' investigators interviewed a witness who revealed that Ford had stated that he believes the Norfolk Four are innocent, which directly contradicts Ford's sworn testimony under oath on two prior occasions that he believes the Norfolk Four are guilty; the investigators interviewed a witness who revealed that concerns mounted in the Norfolk homicide unit about whether the suspects arrested in the Michelle Bosko murder case were actually guilty, but Ford and the other detectives chose to continue arresting suspects and allow prosecutors to decide whom to prosecute; and a number of sources of information about Ford expressed fear of retaliation if their identities were publicly disclosed.

On December 17, 2010, the Circuit Court issued an Order in Dick's case requiring him to submit any additional "newly discovered evidence" to the Court on or before January 11, 2011. Order, *Dick v. Fahey*, CL-10-5111 (Va. Cir. Ct. Dec. 17, 2010). On the same date, the Court entered an Order in co-defendant Williams' case denying a request by Williams to seal portions of the Salzman Affidavit, because of witnesses' retaliation fears, and striking significant portions of the

affidavit, stating, "there already have been too many filings digressing from the main issue in this action." Order, *Williams v. Fahey*, CL-10-4331 (Va. Cir. Ct. Dec. 17, 2010). The Circuit Court granted Williams leave to file a supplement to his Opposition and revised affidavits. *Id.* at 2–3.

On January 10, 2011, pursuant to the Circuit Court's order, Williams filed a Supplement to Petitioner's Opposition to Respondent's Motion to Dismiss (hereafter "Supplemental Opposition"). Exhibit A to the Supplemental Opposition was an affidavit from a former special agent with the FBI ("Stokes Affidavit"), an investigator for Williams, Dick, and Wilson. The Stokes Affidavit described how the investigators were stymied in their efforts to obtain additional information required by the Circuit Court's December 17, 2010 Order. For example, a current Norfolk police officer who possessed information concerning Ford said that he would like to provide that information, but would not do so without permission from the Norfolk Police Chief, and the Norfolk Police Chief refused to grant permission. Moreover, as noted in a supplemental affidavit filed in support of the Supplemental Opposition, the Norfolk Police Department, the Norfolk Commonwealth's Attorneys Office, and the Office of the Attorney General subsequently refused requests by Williams's counsel for permission for the officer to speak to Williams' investigators. Aff. of Donald P. Salzman at 2–4, *Williams v. Fahey*, CL-10-4331 (Va. Cir. Ct. Jan. 11, 2011). On January 11, 2011, Mr. Dick filed a letter joining the arguments of Williams as set forth above.

On February 2, 2011, the Circuit Court granted the Motion to Dismiss "on the plea of the statute of limitations." Letter Op. at 5, *Dick v. Fahey*, CL-10-5111 (Feb. 2, 2011).<sup>2</sup> The Circuit Court summarily denied Dick's Discovery Motion because it granted the Motion to Dismiss. *Id.* at 6. On February 28, 2011, Judge Martin issued a Final Order, upon which Dick noted his Objections.

Dick noticed an appeal and, on May 26, 2011, filed a Petition to Appeal with the Supreme Court of Virginia.

### **Status of Ford's Case**

Ford filed a notice of appeal on March 1, 2011. The Court of Appeals for the Fourth Circuit assigned Ford counsel and set a briefing schedule that concludes in August 2011. The Fourth Circuit has not set a date for oral argument.

### **Status of Derek Tice's Habeas Litigation**

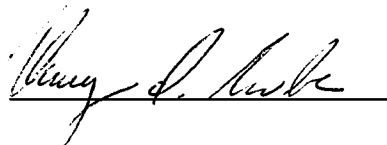
On April 20, 2011, the Fourth Circuit rejected the Commonwealth's appeal and affirmed the grant of habeas corpus relief to Derek Tice by the late Honorable Richard L. Williams of this Court. *Tice v. Johnson*, No. 09-8245 (4th Cir. 2011). The Commonwealth did not seek a rehearing en banc of the Fourth Circuit's decision upholding this Court's grant of habeas relief to Derek Tice.

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<sup>2</sup> In the same Letter Opinion, Judge Martin granted the motions to dismiss filed by the respondents in the Williams and Wilson cases.

Respectfully submitted,

June 21, 2011

A handwritten signature in black ink, appearing to read "George H. Kendall", written over a horizontal line.

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**Certificate of Service**

I hereby certify that on June 21, 2011, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following:

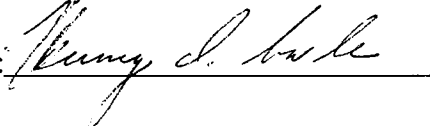
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